

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---------------------------|---|-------------------------|
| DIAMOND FREIGHT, INC., |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | Case No. 19-cv-00590 |
| |) | |
| KING'S EXPRESS INC., |) | Judge: Elaine E. Bucklo |
| DENNIS McCORMICK and |) | |
| INFINITY LOGISTICS, INC., |) | Magistrate Judge: |
| |) | Hon. Jeffrey T. Gilbert |
| Defendants. |) | |

**PLAINTIFF'S MOTION FOR JUDGMENT ON THE ANSWER OF
THIRD PARTY CITATION RESPONDENT AND TURNOVER OF FUNDS**

Plaintiff, Diamond Freight, Inc., by and through its attorneys, Bishop & LaForte, Ltd., and in support of Plaintiff's Motion for Judgment on the Answer of Third Party Citation Respondent, Wells Fargo Bank, N.A., and for Turnover of Funds, states as follows:

1. On September 17, 2019, Judgment was entered in this Court in favor of the Plaintiff, Diamond Freight, Inc. (hereinafter "Plaintiff"), and against, as relevant here, Dennis McCormick, in the total amount of \$56,752.00. See **Exhibit A** [Dkt. 40]. Presently, the balance of the Judgment of \$56,752.00 remains due and owing.

2. On November 12, 2019, a Citation to Discover Assets was served on Third Party Wells Fargo Bank, N.A. (hereinafter "Wells Fargo") and a Notice of Citation was mailed via first class mail to Dennis McCormick at his last known address of 19466 Woodlands Dr. Huntington Beach, CA 92646. See Plaintiffs Affidavit of Service and Certificate of Mailing, attached hereto as Group **Exhibit B**.

3. Wells Fargo served its Answer, received on November 19, 2019, indicating that Wells Fargo is in possession of non-exempt funds belonging to Dennis McCormick and indicating

that \$113,523.00 in a checking account was being withheld. See Wells Fargo's Answer, attached hereto as **Exhibit C**.

4. Supplementary proceedings to enforce a judgment are governed by Federal Rule of Civil Procedure 69(a) which provides that a district court is to use state procedure governing the execution of any such judgment. Fed. R. Civ. P. 69(a).

5. Section 5/2-1402 of the Illinois Code of Civil Procedure provides that when assets of a judgment debtor not exempt from the satisfaction of a judgment are discovered, a court may enter an order or judgment compelling the person cited to deliver said assets. 735 ILCS 5/2-1402.

6. As such, the Plaintiff is entitled to the non-exempt property of Dennis McCormick the Judgment Debtor, in full satisfaction of the Judgment Balance remaining due.

WHEREFORE, the Plaintiff, Diamond Freight, Inc., respectfully requests that this Court enter a Judgment on its Third Party Citation and order Third Party Citation Respondent, Wells Fargo, to turnover to Plaintiff in full satisfaction of the judgment, the property of judgment debtor, Dennis McCormick, in the amount of \$56,752.00, and for such other relief that this Court deems just and proper.

Respectfully submitted,

DIAMOND FREIGHT, INC.

By: /s/ George F. LaForte, Jr.
one of its attorneys

George F. LaForte, Jr.
Timothy A. Hickey
glafortejr@bishoplaforte.com
thickey@bishoplaforte.com
BISHOP & LAFORTE, LTD.
1S450 Summit Avenue, Suite 325
Oakbrook Terrace, IL 60181
630.916.0123

IN THE UNITED STATES DISTRICT COURT
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| DIAMOND FREIGHT, INC. |) | |
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| KING'S EXPRESS INC., |) | Honorable Elaine E. Bucklo |
| DENNIS McCORMICK and |) | |
| INFINITY LOGISTICS, INC., |) | Magistrate Judge: Jeffrey T. Gilbert |
| |) | |
| Defendants. |) | |

EXHIBIT A

George F. LaForte, Jr. glafortejr@bishoplaforte.com
ARDC# 6231063
Timothy A. Hickey thickey@bishoplaforte.com
ARDC# 6217465
BISHOP & LAFORTE, LTD.
1S450 Summit Ave., Suite 325 Oakbrook Terrace, IL 60181
Phone: 630.916.0123 Fax: 630.916.0567
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| DIAMOND FREIGHT, INC. |) | |
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| Plaintiff, |) | |
| vs. |) | Case No. 19-cv-00590 |
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| KING'S EXPRESS INC., |) | Magistrate Judge: Jeffrey T. Gilbert |
| DENNIS McCORMICK and |) | |
| INFINITY LOGISTICS, INC., |) | |
| |) | |
| Defendants. |) | |

JUDGMENT ORDER

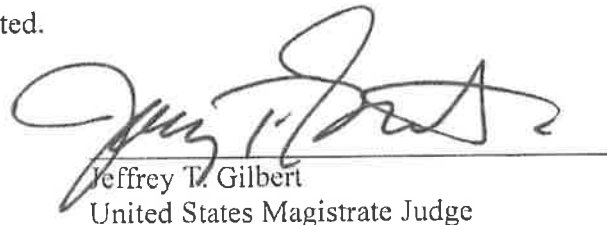
This cause comes to be heard on Plaintiff's Motion for Order of Judgment by Default [ECF No. 30] and the Court being fully informed in the premises as follows:

- A. Plaintiff's complaint was filed on January 29, 2019 [ECF No. 1].
- B. Defendants were to answer or otherwise plead by August 30, 2019 [ECF No. 29] after multiple extensions.
- C. No Defendant has filed a responsive pleading.
- D. Plaintiff has moved for entry of judgment by default [ECF No. 30].

THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Order of Judgment by Default [ECF No. 30] is granted.
2. Judgment is entered in favor of Plaintiff Diamond Freight, Inc. and against Defendants King's Express Inc. and Dennis McCormick, jointly and severally, on Counts I and II of the complaint in the sum of \$47,907.00 plus attorneys' fees of \$8,285.00 and costs of \$570.00.
3. Judgment is entered in favor of Plaintiff Diamond Freight, Inc. and against Defendant Infinity Logistics on Count III in the sum of \$47,907.00 plus costs of \$570.00.

Judgment entered. Civil case terminated.


Jeffrey T. Gilbert
United States Magistrate Judge

Date: September 17, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| DIAMOND FREIGHT, INC. |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | Case No. 19-cv-00590 |
| |) | |
| KING'S EXPRESS INC., |) | Honorable Elaine E. Bucklo |
| DENNIS McCORMICK and |) | |
| INFINITY LOGISTICS, INC., |) | Magistrate Judge: Jeffrey T. Gilbert |
| |) | |
| Defendants. |) | |

EXHIBIT B

George F. LaForte, Jr. glafortejr@bishoplaforte.com
ARDC# 6231063
Timothy A. Hickey thickey@bishoplaforte.com
ARDC# 6217465
BISHOP & LAFORTE, LTD.
1S450 Summit Ave., Suite 325 Oakbrook Terrace, IL 60181
Phone: 630.916.0123 Fax: 630.916.0567
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS, EASTERN DIVISION

Diamond Freight, Inc.
Plaintiff(s),

Case No.: **19 CV 00590**

AFFIDAVIT OF SERVICE

vs.

King's Express Inc., et al.
Defendant(s),

I, **Richard Krolikowski**, being first duly sworn on oath, depose and say the following:

I am over the age of 18, not a party to this action, and an employee of Elite Process Serving and Investigations, Inc., a licensed private detective agency, license number 117-001199.

Type of Process: **Letter dated November 7, 2019, Citation to Discover Assets to Third Party, Four (4) Copies of Answer of Third Party Respondent Citation and Citation Notice for Dennis McCormick**

Defendant to be served: **Wells Fargo Bank, N.A.**

Address where served: **11000 31st Street, Westchester, IL 60154**

On **November 12, 2019** at **10:10 AM**, I served the within named defendant in the following manner:

CORPORATE SERVICE: By leaving a copy of this process with **Scott Angst**, (Title) **Manager**, a person authorized to accept service and informed the person of the contents thereof.

Description of person process was left with:

Sex: **Male** - Race: **White** - Hair: **Brown** - Approx. Age: **38** - Height: **5ft 11in** - Weight: **250**

Comments: Refused date of birth. Obtained signature.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

FURTHER AFFIANT SAYETH NOT.

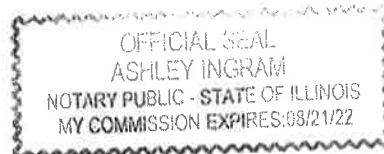
X 
Richard Krolikowski


State of Illinois

County of Will

Subscribed and Sworn to before me on this

13 day of November, 2019




Signature of Notary Public

Job: 520909

File:



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| DENNIS McCORMICK and |) | |
| INFINITY LOGISTICS, INC., |) | Magistrate Judge: Jeffrey T. Gilbert |
| |) | |
| Defendants. |) | |

EXHIBIT C

George F. LaForte, Jr. glafortejr@bishoplaforte.com
ARDC# 6231063
Timothy A. Hickey thickey@bishoplaforte.com
ARDC# 6217465
BISHOP & LAFORTE, LTD.
1S450 Summit Ave., Suite 325 Oakbrook Terrace, IL 60181
Phone: 630.916.0123 Fax: 630.916.0567
Attorneys for Plaintiff

REQU
119589019

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DIAMOND FREIGHT, INC.

Plaintiff,

vs.

KING'S EXPRESS INC.,
DENNIS McCORMICK and
INFINITY LOGISTICS, INC.,

Defendants.

BEST COPY

Case No. 19-cv-00590

Honorable Elaine E. Buckle

Magistrate Judge: Jeffrey T. Gilbert

CITATION TO DISCOVER ASSETS TO THIRD PARTY

To: Wells Fargo Bank, N.A.
11000 31st Street
Westchester, IL 60154

YOU ARE REQUIRED to either file your answer to this Citation on the form appearing on the last page or appear on November 21, 2019 at 9:15 AM before the Honorable Jeffrey T. Gilbert in Courtroom 1386 of the United States District Court for the Northern District of Illinois, Dirksen Federal Courthouse, 219 S. Dearborn, Chicago, Illinois 60604.

Judgment was entered on September 17, 2019, in favor of Plaintiff Diamond Freight, Inc. and against Defendants in this Court under Case No. 19-cv-00590 in the sum of \$56,762.00 against Dennis McCormick, which remains due and owing plus interest.

Your answer will inform the Court as to property you may hold belonging to Dennis McCormick

YOU ARE FURTHER COMMANDED TO PRODUCE:

SEE ATTACHED RIDER

YOU ARE PROHIBITED from making or allowing any transfer or other disposition of, or interfering with any property not exempt from execution or garnishment belonging to the judgment debtor, or to which the judgment debtor may be entitled, or which may be acquired by or become due to the judgment debtor, and from paying over or otherwise disposing of any money not so exempt, which is due or becomes due to the judgment debtor, until further order of court or termination of the proceedings. This prohibition shall remain in effect until further order of court or termination of the proceeding. You are not required to withhold the payment of any money beyond double the amount of the total sum due the judgment creditor.

If the account consists solely of funds that can be identified as exempt under Federal or State law, you are PROHIBITED from FREEZING THE ACCOUNT and YOU MUST RESPOND that the account consists solely of exempt funds. Deposited funds that are exempt under Federal and State law include Social Security, SSI, veteran's benefits, Railroad Retirement benefits, public assistance benefits, unemployment compensation benefits, and/or circuit breaker property tax relief benefits.

WARNING: Your failure to comply with the citation proceeding may result in a judgment being entered against you for the unsatisfied amount of this Judgment. 735 ILCS 5/2- 1402(f)(1).

WARNING: YOUR FAILURE TO APPEAR IN COURT OR FILE YOUR ANSWER AS DIRECTED MAY CAUSE YOU TO BE ARRESTED AND BROUGHT BEFORE THE COURT, TO ANSWER TO A CHARGE OF CONTEMPT OF COURT, WHICH MAY BE PUNISHABLE BY IMPRISONMENT.

CERTIFICATION BY ATTORNEY FOR JUDGMENT CREDITOR

Under penalties as provided by law, the undersigned certifies that the above information regarding the amount of the judgment, the date of the judgment, the balance due thereon, and the name of the Court and the number of the case are true and correct.

/s/ George F. LaForte, Jr.

George F. LaForte, Jr.

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ARDC# 6231063
Timothy A. Hickey thickey@bishoplaforte.com
ARDC# 6217465
BISHOP & LAFORTE, LTD.
18450 Summit Ave., Suite 325 Oakbrook Terrace, IL 60181
Phone: 630.916.0123 Fax: 630.916.0567

Clerk of the Court for the United States District Court, Northern District of Illinois:

THOMAS G BRUTON

Deputy Clerk:



Date: NOV 05 2019

RIDER

All records pertaining to any accounts held by Dennis McCormick at Wells Fargo Bank, NA from September 17, 2019 to present, including but not limited to, statements, incoming and outgoing checks, deposit items, incoming and outgoing wire transfers, and signature cards.

George F. LaForte, Jr. glafortejr@bishoplaforte.com
ARDC# 6231063
Timothy A. Hickey thickey@bishoplaforte.com
ARDC# 6217465
BISHOP & LAFORTE, LTD.
18450 Summit Ave., Suite 325 Oakbrook Terrace, IL 60181
Phone: 630.916.0123 Fax: 630.916.0567

UPDATED

Citation to Discover Assets to a Third Party

(03/14/18) CCM 0124 C

ANSWER OF THIRD PARTY RESPONDENT CITATION

This first section must be filled out by the judgment creditor.

Citation/Respondent: Wells Fargo Bank, N.A. Court Date: _____
Defendant's Name: Dennis McCormick SSN: xxx-xx- Case No. 19-cv-00590
Judgment Balance: \$ 56,762.00

This is a Citation: Freeze up to double the Judgment Balance

INTERROGATORIES

1. On the date of service of the citation, did you have in your possession, custody or control any personal property or monies belonging to the judgment debtor? ☒ Yes ☐ No
If the answer is "yes" go to the next question. If "no", go to the instructions.
2. Is this an IRA account? Or have all of the deposits made during the past 90 days been electronically deposited and identified as exempt Social Security, Unemployment Compensation, Public Assistance, Veteran's Benefits, Pension or Retirement or by a source drawing from any other statutory exemptions? ☐ Yes ☒ No
If the answer is "yes" go to the next question. If "no", go to the instructions.
3. Is/Are the account(s)' current balance(s) equal to or less than the total of the exempt deposits? ☐ Yes ☒ No
If you answered "yes" to all three (3) questions and funds in the account(s) are exempt, do not freeze the funds. Go to the "instructions" below.

| 4. | Account Balance | Amount Withheld |
|-----------------------------------|---|---------------------|
| A. Savings Account | \$ _____ | \$ _____ |
| B. Check/MMA/Now Account | \$ _____ | \$ <u>113524.00</u> |
| C. Certificate of Deposit | \$ _____ | \$ _____ |
| D. Trust Account/Other | \$ _____ | \$ _____ |
| (Describe) _____ | | |
| E. Safety Deposit | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | |
| F. Land Trust No. _____ | | |
| G. Less Right of Offset for Loans | | |

Total Amount Frozen: 113524.00

5. List all electronic deposits into account(s) and their source(s) except deposits: accounts now closed
- | Account No. | Source | Monthly Amount |
|-------------|--------|----------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois

cookcountyclerkofcourt.org

Page 3 of 4

Citation to Discover Assets to a Third Party

(03/14/18) CCM 0124 D

6. List all joint account holders or adverse claimants: N/A

Name _____ Name _____
Address _____ Address _____

Account Information: Account Information:
Type ☐ Checking ☐ CD Savings Type ☐ Checking ☐ CD Savings
Account Number: _____ Account Number: _____

Name _____
Address _____

Account Information:
Type ☐ Checking ☐ CD Savings
Account Number: _____

INSTRUCTIONS

File this Answer at least three (3) days before the court date to assure timely processing

1. Complete the Answer of Third Party Respondent Citation section on this form.
2. Complete and sign the certification at the bottom of this page.
3. File this affidavit electronically by visiting www.cookcountyclerkofcourt.org and proceed with the eFile process.

CERTIFICATION

Under the penalties as provided by law pursuant to Section 1-109 of the code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct and that I have mailed this Answer to Defendant(s).

Atty. No.: _____
Atty Name: George F. LaForte, Jr.
Atty. for: DIAMOND FREIGHT, INC.
Address: 15450 Summit Ave., Suite 325
City: Oakbrook Terrace State: IL
Zip: 60181
Telephone: 6309160123
Primary Email: glafortejr@bishoplaforte.com

Jacqueline Donnelly
AGENT 11/19/19

Agent Name

Agent Signature

WELLS FARGO BANK
LEVY PROCESSING
MAC S4001-01E
P.O. BOX 29779
PHOENIX, AZ 85038-9779
PHONE: 480-724-2000
FAX: 866-670-1561

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois cookcountyclerkofcourt.org

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